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IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

THE UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA, ET AL.,

Petitioners,

v.

FIRST PRESBYTERIAN CHURCH OF SCHENECTADY, ET AL.,

Respondents.

On Petition For Writ Of Certiorari To The Court Of Appeals Of New York

AMICUS BRIEF OF THE GENERAL COUNCIL ON FINANCE AND ADMINISTRATION OF THE UNITED METHODIST CHURCH

IN SUPPORT OF REVERSAL

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The General Council on Finance and Administration of the United Methodist Church, respectfully submits this *amicus curiae* brief in support of the Petition of the United Presbyterian Church and the Presbytery of Albany for a writ of certiorari in the above-captioned case. The filing of this brief has been consented to by all the parties pursuant to Rule 36 of this Court and proof of such consent has been filed with the Clerk of the Court.

INTEREST OF AMICUS CURIAE

The General Council on Finance and Administration of the United Methodist Church, ("GCFA"), an Illinois corporation not-for-profit, has among its duties and concerns the safe-guarding and protection of certain legal interests of the United Methodist Church ("UMC"), an international Protestant religious denomination and movement with approximately 10 million members and 43,000 local churches.[1]

For the reasons hereinafter stated, GCFA believes the decision of the Court of Appeals of New York misinterprets and erroneously applies the Court's decision in *Jones v. Wolf*, 443 U.S. 595 (1979) which, if allowed to stand, will seriously threaten constitutionally protected religious freedoms of connectional and hierarchical churches as well as other establishments of religion. Amicus curiae urges the Court to grant its writ of certiorari to correct such errors; also, to provide needed guidance to the many state and federal courts which increasingly are being called upon to give proper application to the "neutral principles of law" approaches authorized by *Jones*.

While the United Methodist polity is less unified and authoritarian than that of Presbyterianism, UMC is, by self-definition, a "connectional" church. Many courts have classified UMC as a "connectional and hierarchical" de-

[1] GCFA's duties and concerns with regard to legal matters derive from Par. 907(4) of the *Book of Discipline* of the United Methodist Church. The *Book of Discipline* contains the constitution and basic legislation of United Methodism and constitutes the pronouncement of the highest authority or judicatory in the denomination. It is the evolution of over 200 years of Church law and usage.

nomination. By tradition, trust clauses, and provisions of its fundamental law, United Methodism has sought to preserve the continued use of local church properties for its general denominational purposes and to prevent misappropriation of such properties by local factions or dissident groups. Local church adherence to the general denominational objectives and purposes is essential to the ongoing role of UMC as a connectional and hierarchical church as distinguished from the "congregational" system in which the local church is self-governing and independent.

Periodically, appropriate officials at the Annual Conference level[2] of UMC have found it necessary to litigate to uphold such provisions against schismatic attempts to apply local church property to separate factional uses. Methodist property cases have not typically involved inquiry into or enforcement of the decisions of church tribunals as in many of the Presbyterian cases. See, e.g., *Brady v. Reiner*, 198 S.E.2d 812 (W.Va., 1973). However, the courts have uniformly given cognizance to the internal disciplinary arrangements of United Methodism as set forth in its *Book of Discipline*. In so doing, they have applied principles first enunciated in *Watson v. Jones*, 80 U.S. (13 Wall) 679 (1872); and subsequently in its progeny, *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94 (1952); *Kreshik v. St. Nicholas Cathedral*, 363 U.S. 190 (1960), and *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426

[2] The annual conferences are the fundamental constitutional bodies of United Methodism operating within prescribed geographical areas in the United States and abroad. They are in some respects comparable to Presbyteries, although United Methodist units, in general, are not layered vertically in an ascending order of authority as in Presbyterianism. UMC is not incorporated nor is it a jural entity in any quasi-corporate or other form.

U.S. 696 (1976). Most recently, the viability of these cases was reaffirmed in *Jones* in the context of "neutral principles of law" approaches therein discussed.

Thus in *Jones*, the Court held that while "neutral principles of law," in certain circumstances, could be the criteria of decision of property disputes consistently with constitutional principles nevertheless:

> "It is also clear, however, that 'the First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes.' *Id.*, at 449, 21 L.Ed.2d 658, 89 S.Ct. 601. Most importantly, the First Amendment prohibits civil courts from resolving church property disputes on the basis of religious doctrine and practice. *Serbian Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 710, 49 L.Ed.2d 151, 96 S.Ct. 2372 (1976). . . . As a corollary to this commandment, the Amendment requires that civil courts defer to the resolution of issues of religious doctrine or polity by the highest court of a hierarchical church organization. *Serbian Orthodox Diocese*, 426 U.S., at 724-725, 49 L.Ed.2d 151, 96 S.Ct. 2372; *Watson v. Jones*, 13 Wall 679, 733-734, 20 L.Ed. 666 (1872)."
>
> [443 U.S. 595 at 602]

The Court also made it clear that a connectional or hierarchical church may provide, in its "constitution" or other governing book of discipline or order, for the resolution of property disputes in some legally cognizable form. Such arrangements, whether by trust, contract, settled practices and understanding indicated by the parties, must exist prior to the dispute.

> "At any time before the dispute erupts, the parties can insure, if they so desire, that the faction loyal to the hierarchical church will retain the church property. They can modify the deeds or the corporate

charter to include a right of revision or trust in favor of the general church. Alternatively, the constitution of the general church can be made to recite an express trust in favor of the denominational church. The burden involved in taking such steps will be minimal, *and the civil courts will be bound to give effect to the result indicated by the parties provided it is embodied in some legally cognizable form.*" (Emphasis supplied)

[443 U.S. 595 at 604]

It is under these guidelines from *Jones* that the dispute between the local church and the hierarchical religious denomination must be resolved.

STATEMENT OF THE CASE

The dispute in its genesis and continuing nature is one involving the doctrine and practices of a hierarchical religious denomination.[3] The Appellate Division's description of the dispute is most accurately stated (A-24):

> "This matter concerns the dispute between a local church and its regional Presbytery over the power of an administrative commission appointed by the Presbytery to control the affairs and property of the local church . . . ."

The "power" referred to is conferred by the constitution of the United Presbyterian Church, U.S.A., a hierarchical religious denomination.

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[3] "It arose when First Church withdrew from the denominational church because of a disagreement over UPCUSA's financial support of radical political groups and individuals." (A-1) [Such references herein are to the Appendix to the Petition for Writ of Certiorari.]

There is no question at all of the legal title of the property occupied by that local church since title is in the non-profit corporation incorporated in 1803 by the local church in accordance with the polity and practice of the hierarchical church. The trustees of that non-profit corporation are, under the Presbyterian constitution, "subject to the superior authority and direction of the session of the local church" (Petition, p. 5).

The history of the intra-church dispute is not adequately described in the opinion of the Court of Appeals. It is fully and well stated by the Appellate Division (A-25):

> "[P]rior to January, 1977, as a result of disenchantment and discontent with what is considered the policies and activities of defendant United Presbyterian Church in the United States of America (UPCUSA), plaintiff petitioned defendant Presbytery of Albany to be dismissed to another denomination. The request was denied and an administrative commission was instructed to investigate the actions of the local Session, the governing body of plaintiff church elected by the members of its congregation. However, before said commission rendered its report, plaintiff church, on January 24, 1977, at its annual meeting, adopted a resolution severing relations with defendants and retaining title to all property both real and personal then held or administered by it. On February 1, 1977, the investigating commission made its report to the Presbytery, recommending removal of the local Session as the governing body of the First Presbyterian Church of Schenectady and the appointment of another administrative commission with full power of the Session to act in its place. The Presbytery acted in accordance with the recommendation . . . . There was no administrative appeal taken by plaintiff church or any of its members through the hierarchy of defendants following this ac-

> tion; rather, plaintiffs chose to ignore or disobey directives of the commission and pursued their functions without acceptance of or submission to the authority of defendants. . . ."

On April 17, 1977, the seceders filed this suit seeking a declaratory judgment that the local church is independent of the denominational church and asking for an injunction against any interference by the denomination and its Presbytery, with respect to the use of the local church property. The United Presbyterian denomination and its Presbytery, in turn, counterclaimed seeking an injunction against interference with the activities of the Presbytery through its Administrative Commission in maintaining the local church as an ongoing United Presbyterian Church and in controlling the use of its properties in accordance with the *Book of Order*.

The trial court dismissed plaintiffs' request for declaratory relief and denied defendants' counterclaim but granted the permanent injunction sought by dissenters. The Appellate Division of the New York Supreme Court reversed and granted the counterclaim. The Court of Appeals reinstated the order of the trial court. That court properly denied plaintiffs' request for declaratory relief, holding that such action would require a constitutionally impermissible inquiry with respect to the dispute and over the plaintiffs' withdrawal from the denomination; nevertheless, the court permitted an injunction to issue against the United Presbyterian Church and the Presbytery restraining them from any interference with plaintiffs' use of the local property.

The Court of Appeals denied the petition for rehearing on July 5, 1984 and the petition for writ of certiorari followed.

SUMMARY OF ARGUMENT

The dispute in this case is one of doctrine and practice of a hierarchical religious denomination also involving the question of whether a replacement Session of the local church created by the Presbytery now possesses the full power of the prior elected Session to control the use of the local church property and to direct its affairs. The Court below erred in failing to defer to the decision of a commission appointed by the Presbytery pursuant to the provisions of the Presbyterian denomination's constitution in its *Book of Order* and in failing to give effect to provisions thereof which pertain to the control of the use of the local properties. Instead, the Court erroneously treated the question of property control and use as severable from the total dispute. Thus, the Court assumed the question at issue, namely, the authority and right of the plaintiffs to unilaterally withdraw from the denomination and to take with them all local Presbyterian properties.

While correctly ruling that a civil court may not intrude into the religious area to decide which of two competing bodies is the controlling Session of the local church, the court below erroneously denied the counterclaim of defendants and entered a permanent injunction after deciding for itself the meaning and effect of the constitutional provisions in the *Book of Order* of the United Presbyterian Church, U.S.A. The court below thereby violated the controlling principles of *Serbian Orthodox Diocese* and *Jones v. Wolf.*

The grant of a permanent injunction against the denomination and its Presbytery prohibiting them from con-

trolling the use of the properties of the local church was an interference with the free exercise of religion by the hierarchical denomination and its Presbytery, in violation of the First and Fourteenth Amendments of the United States Constitution.

ARGUMENT

A. The Dispute Involves Doctrine And Practice Of The Hierarchical Denomination And, Accordingly, Required Judicial Deference To The Decision Of The Presbytery, Its Commission And The Church Constitution, Pursuant To *Serbian Orthodox Diocese* And *Jones v. Wolf.*

While the Court below correctly denied plaintiffs' first demand for relief as impermissibly drawing civil courts into religious entanglements, the Court next exhibited no reluctance in redefining the dispute as one simply limited to a question of title to property. It did this because on January 24, 1977, plaintiffs used self-help in unilaterally declaring their withdrawal and secession from the denomination, taking with them the church properties. This was in defiance of the decision of the Presbytery and its Commission from which no higher appeals to church judicatories were pursued. The court thus disregarded the decision of the Presbytery which had earlier denied plaintiffs' petition to be dismissed to another denomination. By redefinition of the dispute, the court sought a means of avoiding requirements of *Serbian Orthodox Diocese* and *Jones.*

Because the withdrawal resolution was adopted by the then Session of First Church (while the dispute was pend-

ing before the Presbytery), *eight days before* the Presbytery appointed the second administrative commission as a replacement Session to exercise all powers of the elected Session, the Court of Appeals simply concluded that there was no longer a contest between the two Sessions, one insurgent and one not.

The court then took it upon itself to interpret two express provisions of the *Book of Order* governing the control over a Session by the Presbytery and the use and control of a local Presbyterian church's property. In effect, the court "read" those sections right out of the *Book of Order* denying them any meaning or effect (A-13). It did this by objecting to their editorial location (A-13) or by finding that they should be "discounted" by reason of other provisions elsewhere in the Book relating to spiritual concerns of the Session (A-14).

If disputes concerning doctrine and practice of hierarchical churches can thus be readily side-stepped by the action of a local church in withdrawing from a denomination while proceedings are pending before a high judicatory of the denomination, then the teachings of *Serbian Orthodox Diocese* and *Jones v. Wolf* can be mocked by the practice of self-help, hardly a neutral principle of law.

The Court of Appeals explained this unusual procedure thusly:

> "The Presbytery had not yet appointed a commission to replace the church Session and plaintiffs had terminated their relations with the Presbytery and refused to recognize its authority. *Thus, judicial resolution of this property dispute will not cause the court to intrude into the religious area* because it is not required to decide which of two competing bodies is the lawful Session with authority to control the property." (Emphasis supplied)

Thus, the eight-day interval before the second commission reported was to become the decisive factor in the court's holding.

Obviously, such an anomalous basis for judicial decision, substituting questionable self-help of the seceders for the intra-church procedures they were committed to follow, cannot possibly comport with constitutional observance of First Amendment protections for hierarchical religious denominations.

B. Assuming *Arguendo* The Dispute To Be Simply One Over Title To Property, The Court Below Failed To Proceed Properly Under Neutral Principles Of Law Approaches.

In *Jones v. Wolf*, this Court announced that the neutral principles approach calls for "settling a local church property dispute on the basis of the language of the deeds, the terms of the local church charters, the state statutes governing the holding of church property, and the provisions in the constitution of the general church concerning the ownership and control of church property. . . ." (443 U.S. 595, 669)

> "If in such a case the interpretation of the instruments of ownership would require the civil court to resolve a religious controversy, then the court must refer to the resolution of the doctrinal issue by the authoritative ecclesiastical body. *Serbian Orthodox Diocese*, 426 U.S. at 709, 49 L.Ed.2d 151. . . ."
>
> [443 U.S. 595, 604]

The Court of Appeals weighed the four types of documents suggested in *Jones v. Wolf*, i.e., the deeds of conveyance, the local church charter, the corporate statutes and the Presbyterian *Book of Order*. It concluded that the deeds conveyed legal title to the non-profit cor-

poration, found that the charter and statutes were not strongly dispositive and concluded that the provisions of the Presbyterian constitution were not legally cognizable provisions for a variety of irrelevant reasons, such as: absence of express trust language, claims that sections of the *Book of Order* dealing with the use and control of church properties "are located outside of the Property Section" of the *Book of Order*, and that other sections of the *Book of Order* ascribe to the Session purely spiritual power (A-13).

The Court gave no consideration to whether principles of contract law could apply to a local church, the members of which for almost 200 years have accepted the Presbyterian doctrines, governance, ritual and worship as contained in the *Book of Order* nor did the Court consider as a neutral principle the type of arrangement referred to in *Jones*:

> "And the civil courts will be bound to give effect to the result indicated by the parties, provided it is embodied in some legally cognizable form."
>
> [443 U.S. 606]

The finding of the Court of Appeals that the non-profit corporation held title to First Church property was irrelevant and ignored the nature of "church." That dry legalism called the corporation or its trustee board, of course, was the legal title-holder but not the "church" as understood in the faith, nor did it possess the beneficial ownership of the property. The local church consisted of the members and Sessions which, from time to time, accepted the Presbyterian doctrines, governance, ritual and forms of worship which were at the heart of the "church." Deciding that the non-profit corporation had legal title to the church property, did not and could not decide which of the two Sessions had the *control* and the beneficial *use* of the property of the local church.

More relevant to the neutral principles approach in that respect were Sections 7, 8 and 15 (Form of Government, Chapter XI of the *Book of Order*).[4] They were all in effect for many years *before the dispute erupted.* They were the governing neutral principles respecting to the *beneficial* ownership and use of the properties.

C. By Adopting Its Neutral Principles For The First Time In This Case, The Court Of Appeals Necessarily Applied The Same Retroactively And Unconstitutionally.

The court's confusion in attempting to apply the "neutral principles" approach in this case is pointedly demonstrated at the outset (A-9) where it referred to *Avitzur v. Avitzur*, 58 N.Y.2d 108, 114-115. Ignoring the *caveat* in *Jones v. Wolf*, 443 U.S. 595, 605(n), 61 L.Ed.2d 775, 786n (1979), regarding the unconstitutionality of a retroactive application of a neutral principles approach, the Court of Appeals said (A-9):

> "The neutral principles of law analysis has not been explicitly adopted by this state, although we applied the rule in *Avitzur v. Avitzur* (58 N.Y.2d 108, 114-115, *cert. den.*, ... U.S. ..... [civil court may enforce the secular terms of a religious marriage contract (Ketubah) through application of ordinary principles of contract law]). We do so in this action. Applying that analysis, we determine that the property shall remain in the control of plaintiff First Church."

By acknowledging that the neutral principles approach had not been "explicitly adopted" in New York and stating "We do so in this action," the Court conceded that its promulgation of governing criteria was necessarily

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[4] The provisions of the *Book of Order* here involved differ from those considered in *Presbyterian Church in the United States, etc. v. Blue Hull Mem. Presbyterian Church* and *Jones v. Wolf*, which cases involved a different Presbyterian denomination.

retroactive. The weak reference to *Avitzur* as a possible precedent is not enough to avoid the vice of retroactivity, particularly since the court carefully avoided relying on *Avitzur* as a prior adoption. In a state, such as New York, which has previously followed the established doctrine of judicial deference to the decisions of judicatories of a hierarchical church, the retroactive adoption of the neutral principles approach necessarily violates the First Amendment guarantee of free exercise rights.

D. The Injunction Against The Hierarchical Denomination And Its Presbytery Is A Patent Violation Of The First Amendment.

In *Walz v. Tax Commission of New York*, 397 U.S. 664 (1970), this Court summarized First Amendment guarantees as follows:

> "The general principle deducible from the First Amendment and all that has been said by this Court is this: that we will not tolerate either governmentally established religion or governmental interference with religion."
>
> [397 U.S. 666]

The injunction ordered by the Court of Appeals prohibiting the United Presbyterian Church, its Presbytery and Commission from exercising the powers expressly given to them in the church constitution to replace the dissident Session with an administrative commission having exclusive authority over the local property, is manifestly an interference with the free exercise of religion.

The court below did not question the hierarchical characteristic of the denomination and Presbytery, but it seemed to disapprove of that form of free exercise of religion saying, "by supporting the hierarchical polity over

other forms and permitting local churches to lose control over their property, the deference rule may indeed constitute a judicial establishment of religion. . . ." (A-11) This unprecedented doctrine would call for rejection of *Watson* and its progeny up to and including *Jones v. Wolf.*

To say that religion may be practiced freely, but that a hierarchical religious denomination may not be protected by its constitution in regard to the use and control of property of constituent local churches, is no guarantee of free exercise of religion at all.

CONCLUSION

For the foregoing reasons, Amicus Curiae respectfully urges this Court to grant the writ of certiorari and to reverse the decision of the Court of Appeals of New York.

Respectfully submitted,

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